



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

FEB 24 1983

COPY MAILED

FEB 24 1983

Commissioner's Office

In re application of :
Robert L. Lundak :
Serial No. 06/247,656 :
Filed March 26, 1981 :
For: HIGH FUSION FREQUENCY FUSIBLE: :
LYMPHOBLASTOID CELL LINE :

DECISION ON PETITION

This is a decision on the "Petition Under Rule 181" seeking to have this application accorded a filing date of April 2, 1981, even though the application was deposited in the Office on March 26, 1981. The sole reason advanced in support of the request to change the filing date is that the deposit of the organisms which are the subject matter of the application did not occur until April 2, 1981, which was after the filing date accorded the application. Petitioner contends that under 37 CFR 1.53, the application should be given an effective filing date of April 2, 1981.

DECISION

The petition is denied. There has been no showing that the application as deposited on March 26, 1981, was not a complete application for the purposes of having a filing date accorded thereto. The question of whether or not the requirements of 35 U.S.C. 112 have been met is a question which is separate and distinct from the question of whether or not a filing date should be accorded to the application. Section 1.55(a) of Title 37, Code of Federal Regulations, provides that the


"filing date of the application is the date on which the complete application, acceptable for placing on the files for examination is received in the Patent and Trademark Office; or the date on which the last part completing such application is received in the case of an incomplete or defective application completed within six months."

There has been no showing that the application as deposited on March 26, 1981, was not "acceptable...for examination" as set forth in 37 CFR 1.55(a). The question of compliance with 35 U.S.C. 112 is determined during the examination and not prior to according the application a filing date in the first instance. The mere fact that an application includes all of its necessary parts for purposes of being accorded a filing date does not mean that the requirements of 35 U.S.C. 112 have been met. See Section 608.01(p), Manual of Patent Examining Procedure,

regarding the deposit of microorganisms for compliance with the requirements of 35 U.S.C. 112.

The petition is denied since there has been no showing that the application deposited on March 26, 1981, was not complete for the purposes of having of filing date accorded thereto.

The application is being returned to Examining Group 170.


R. Franklin Burnett
Special Assistant to the
Assistant Commissioner

Bertram I. Rowland
Townsend and Townsend
Steuart Street Tower
One Market Plaza
San Francisco, CA 94105